

FILED _____ ENTERED _____
LODGED _____ RECEIVED _____

JUN 28 2001 MR

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY _____ The Honorable Robert S. Lasnik
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID MIGHELL,

Plaintiff,

v

SONIC FOUNDRY, INC., a Maryland
corporation, RIMANTAS BUINEVICIUS
and JANE DOE BUINEVICIUS, and the
marital community comprised thereof, and
KEN MINOR and JANE DOE MINOR,
and the marital community comprised
thereof

Defendants

No C00-1319L

SECOND AMENDED COMPLAINT

JURY TRIAL REQUESTED

Plaintiff, David Mighell, alleges:

I. NATURE OF THE ACTION

1 This is an action brought in United States District Court for the Western
District of Washington on the basis of diversity. Plaintiff brings this action against his
former employer, Sonic Foundry, Inc., and Rimantas Buinevicius and Ken Minor. This
action is based on claims for breach of contract, conversion, and violations of Washington
State Wage and Hour statutes RCW 49.52 *et seq.* and RCW 49.48 *et seq.* Plaintiff seeks
monetary relief, including pecuniary and nonpecuniary damages, and all attorneys fees
and costs to the fullest extent allowed by law.



II. JURISDICTION AND VENUE

2 Plaintiff is a resident of the State of Washington

3 Defendant Sonic Foundry is a corporation, incorporated under the laws of
4 the State of Maryland and with its principle place of business in the State of Wisconsin

5 Defendants Rimantas Buinevicius and Ken Minor are individuals who, at
6 all times relevant to this claim, conducted business in Washington

7 This Court has subject matter jurisdiction based on complete diversity of
8 parties under 28 U S C § 1332

9 This Court has personal jurisdiction over Defendants, based on their
10 employment of Plaintiff in the State of Washington and the business conducted by
11 Defendants in the State of Washington.

12 This Court has personal jurisdiction over Defendants Rimantas
13 Buinevicius and Ken Minor based on their employment of Plaintiff in the State of
14 Washington and the business conducted by Defendants in the State of Washington

15 Venue is proper in this action under 28 U S C § 1391(c).

III. STATEMENT OF CLAIMS

16 Defendant Sonic Foundry is a software company that writes programs for
17 media providers allowing these providers to reduce their media formats to data formats
18 deliverable across the Internet

19 Defendant Rimantas Buinevicius is the Chief Executive Officer of Sonic
20 Foundry, Inc

21 Defendant Ken Minor is the Chief Financial Officer of Sonic Foundry, Inc

22 On or about August 26, 1999, Defendant Sonic Foundry offered
23 employment to Plaintiff

1 13 The terms of the Defendant's offer included, but were not limited to,
2 certain amounts of compensation, stock options, stock purchase, salary bonuses, revenue
3 sharing, and other benefits. This compensation constituted Plaintiff's wages
4

5
6 14 In return for these wages, Plaintiff was to perform various services for
7 Defendants as an employee
8

9
10 15 On or about August, 26, 1999, Plaintiff accepted this offer based on the
11 compensation package and became an employee of Sonic Foundry, Inc.
12

13 16 Defendant Sonic Foundry's offer and the Plaintiff's acceptance created a
14 binding contract.
15

16
17 17. Plaintiff performed services as Defendants' employee from on or about
18 September 13, 1999 until on or about April 7, 2000
19

20 18 On or about April 7, 2000, Defendants, through its agents, unilaterally
21 terminated Plaintiff's employment breaching Sonic Foundry's contract with Plaintiff
22

23 19. As a result of this breach, Plaintiff suffered damages in an amount to be
24 proven at trial
25

26 20 Under the terms of the contract entered into between the parties,
27 Defendants owed Plaintiff certain wages upon his termination
28

29 21 Defendants intentionally withheld these wages due Plaintiff under the
30 terms of the employment agreement
31

32 22 Plaintiff made several demands for these unpaid wages
33

34 23 Defendants have still not paid these wages to Plaintiff.
35

36 24 Defendants withholding of these wages is in breach of the contract
37 between the parties
38

39 25 As a result of this breach, Plaintiff suffered damages in an amount to be
40 proven at trial
41

42 26 Defendants promised Plaintiff a compensation package
43
44
45
46
47
48
49
50
51
52

27. Defendants reasonably expected to induce action on the part of Plaintiff

28 Plaintiff acted by performing all of the services assigned to him following

29. Plaintiff reasonably relied on Defendants' offer of compensation.

30. Plaintiff has been unjustly denied compensation promised by Defendants

31 As a result of these actions caused by Defendants, Defendants are estopped

32 Defendants are employers subject to the Washington State Wage and Hour

33 Defendants intentionally took Plaintiff's wages, which it owed Plaintiff,

34 During this period of conversion, Plaintiff's wages and unpaid

35 The effect of the above actions has been to deprive Plaintiff of his rightful

IV. DAMAGES

36 Defendants' conduct as described above has caused Plaintiff the following

(a) Lost pay, wages and benefits in amounts to be established at trial,

1 (b) Out of pocket expenses and special damages, including but not limited to
2 medical expenses,

3
4 litigation costs, and attorney's fees, in amounts to be established at trial,

5
6 (c) Damages arising as a consequence of Defendants' breach of contract or
7 promise in amounts to be established at trial,

8
9
10 (d) Award Plaintiff all damages, including the difference between the value of
11 the property at the time it was illegally converted to the use of the
12 corporation and its value at the time it is awarded to plaintiff, in an amount
13 to be established at trial,

14
15
16 37 Defendants' intentional withholding of wages in violation of the
17 Washington Wage and Hour statutes RCW 49 52 050 make Defendants liable for
18 payment of double damages as exemplary damages pursuant to RCW 49 52 070

19
20
21 38 Defendants' withholding of wages in violation of RCW 49 52 050 makes
22 the Defendants liable for litigation costs and reasonable attorney's fees under RCW
23 49 52 070 and other applicable statutes and authority.

24
25
26
27
28
29
30
31
32
33 **V. REQUEST FOR RELIEF**

34 39. Plaintiff Mighell therefore requests this Court enter judgment against
35 Defendants Sonic Foundry, Inc , Rimantas Buinevicius, and Ken Minor, and to grant
36 relief as follows

37
38 A Award Plaintiff special damages for lost pay, lost business opportunities,
39 lost wages and benefits, and medical expenses, in an amount to be established at trial,

40
41 B Award Plaintiff all damages allowed by law for Defendants' malicious and
42 reckless conduct described in the above paragraphs, in an amount to be established at
43 trial,

1 C Order Defendants to make Plaintiff whole by providing for Plaintiff's
2 losses consequential to Defendants' breach of the employment contract
3

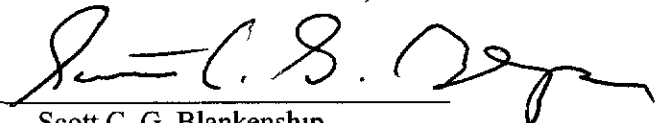
4 D Order Defendants to pay exemplary damages in the form of double
5 damages for its willful and intentional withholding of Plaintiff's wages pursuant to RCW
6 49.52.070, and other applicable statutes and authority.
7
8

9 E Order Defendants to pay litigation costs and attorney's fees for its willful
10 and intentional withholding of Plaintiff's wages pursuant to RCW 49.52.070, RCW
11 49.48, or other applicable statutes and authority
12
13

14 F Award Plaintiff any additional or further relief that this Court finds
15 appropriate, equitable, or just
16
17

18 DATED this 27 day of June, 2001
19
20
21

22 THE BLANKENSHIP LAW FIRM, P S
23

24 By 
25 Scott C G Blankenship
26 WSBA No 21431
27 Attorneys for Plaintiff
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52